Yii Chee Ming v Teo Ah Khing @ Teo Cho Teck & Anor

HIGH COURT (KUCHING) — CIVIL SUIT NO 22–156 OF 1999–III (II)
DAVID WONG JC
26 NOVEMBER 2006

Equity — Gift — Money advanced for purchase of property — Shares in private company — Whether defendant holding half share in property on resulting trust or on constructive trust for plaintiff — Whether there was gift of shares in a company — Whether gifts for services rendered by defendant

The plaintiff is Yii Chee Ming also known as Dennis ('Dennis') and the first defendant is Teo Ah Khing @ Teo Cho Teck ('TAK'). Dennis was a director of several companies, one of which was Hock Seng Lee Realty Sdn Bhd ('HSL Realty') and another Hock Seng Lee Bhd ('HSLB') which became listed in the Kuala Lumpur Stock Exchange in 1996. TAK was a professional architect and planner. The suit taken out by the plaintiff concerned a property in Singapore, ('Tras Street property') and the relief was for the repayment of S$1,722,681.95 from the first and/or second defendants, being money advanced by the plaintiff to the defendants for the purchase of the Tras Street property or alternatively for a declaration that the second defendant was holding half share in the Tras Street property on a resulting trust or on a constructive trust for the plaintiff. The defendants' counterclaims were for a declaration that the one share in Khing Tung Sdn Bhd and all the interest and benefits attached thereto was a gift to the first defendant who in turn gave it to the second plaintiff. Adjunct to the defendants' counterclaims, the plaintiff also counterclaimed for an order that the second plaintiff forthwith transfer the said one share in Khing Tung Realty Sdn Bhd to the defendant or his nominee; alternatively, a declaration that the second plaintiff by counterclaim holds the said one share in Khing Tung Realty Sdn Bhd on a resulting trust for the defendant. The gist of the plaintiff's case was that the first defendant was a professional engaged by various companies within the HSL group of companies and that no businessman would have reason to give such a generous gift to the architect who was doing work for his companies. The purported gift amounted to some RM8m which was made up of: (a) the Tras Street property; (b) Khing Tung Realty's shares; and (c) half shares in Khing Ming Realty Sdn Bhd and Samudera Baru Darul Aman Sdn Bhd.

Held:

(1) Gifts refer to an act of giving unsupported by valuable consideration. This was not the case here as TAK all through in his statement and oral testimonies stated that the gifts were in consideration of his services to Dennis and his family companies. Therefore, TAK expected his services to be compensated (see para 23).

(2) The gifts for service rendered by TAK would be taxable. The fact that the services were paid for with a foreign property (Tras Street property) did not make the gift less taxable. The fact the first defendant did not declare the gifts as income corroborated the plaintiff's assertion that Tras Street property and the Khing Tung Realty's share were not gifts (see para 26).

(3) The law is clear about the interests and benefits of shareholders in a company and that is assets in the company do not belong to the shareholders, they belong to the company. What TAK should have done was to sue Dennis for breach of promise in not paying on his behalf half the funds required to inject the four properties in Khing Tung Realty Sdn Bhd. In asking the court to make a declaration, infringes the basic principle that shareholders have no interests in the assets of a company. The value of gifts or benefits to be gained by TAK in the whole scheme of things was just too huge to be true (see paras 29, 31 & 40).

(4) For the Tras Street property, there was a loan from Dennis to TAK. There was no dispute to the fact that the sum of S$1,722,681.95 was paid by Dennis through KKS Machinery Pte Ltd. Although there was no written agreement for the loan, taking into account the fact the relationship between Dennis and TAK had fully blossomed and there was much trust between the two of them, it was not far fetched that at that stage of their relationship Dennis would lend this sum of money to purchase the Tras Street property as by then there were a lot of projects in the pipeline where Dennis could use TAK's professional fees to set off against the loan. TAK's gain from this loan was that it was an interest free loan (see para 42).

(5) The court made the following orders: (a) judgment for the plaintiff against the first defendant in the sum of S$1,722,681.95; (b) the claim against the second defendant was struck out; (c) the first defendant's claims in the counterclaim were struck out; (d) the plaintiff's counterclaim against the second plaintiff in the counterclaim action was struck out (see para 48).

[Bahasa Malaysia summary

Plaintif adalah Yii Chee Ming yang juga dikenali sebagai Dennis ('Dennis') dan defendan pertama adalah Teo Ah Khing @ Teo Cho Teck ('TAK'). Dennis adalah pengarah kepada beberapa syarikat, salah satu daripadanya adalah Hock Seng Lee Realty Sdn Bhd ('HSL Realty') dan yang selainnya adalah Hock Seng Lee Bhd ('HSLB') yang mana telah disenaraikan di Bursa Saham Kuala Lumpur pada 1996. TAK adalah arkitek profesional dan perancang. Tindakan di ambil oleh plaintif berkenaan dengan satu hartanah di Singapura, ('Trass Street Property') dan relief adalah untuk pembayaran kembali sejumlah S$1,722,681.95 daripada defendan pertama dan/atau kedua, atas wang yang telah didahulukan oleh plaintif kepada defendan untuk membeli harta tanah Trans Street atau secara alternatif untuk satu deklarasi bahawa defendan kedua adalah pemegang setengah saham di dalam harta tanah Trans Street yang disebabkan oleh amanah atau di atas satu amanah konstruktif kepada plaintif. Tuntutan balas defendan adalah untuk satu deklarasi bahawa satu saham di dalam Khing Tung Sdn Bhd dan kesemua dan kesemua kepentingan dan faedah yang dilampirkan adalah satu pemberian kepada defendan pertama dan

memberikannya kepada plaintif kedua. Tambahan kepada tuntutan balas defendan, plaintif juga membuat tuntutan balas untuk satu perintah bahawa plaintif kedua melakukan dengan serta merta memindahkan satu saham di dalam Khing Tung Realty Sdn Bhd tersebut kepada defendan atau penamanya; secara alternatif, satu deklarasi bahawa plaintif kedua melalui tuntutan balas memegang satu saham di dalam Khing Tung Realty Sdn Bhd tersebut berdasarkan amanah kepada defendan. Intipati kes plaintif adalah, defendan pertama adalah seorang profesional yang digunakan oleh pelbagai syarikat di dalam kumpulan syarikat HSL dan tiada peniaga di dalam pemikiran yang sebenarnya akan memberikan pemberian yang besar kepada arkitek yang melakukan kerja untuk syarikatnya. Pemberian yang dimaksudkan yang berjumlah kira-kira RM8j yang termasuk: (a) harta tanah Trans Street; (b) saham Khing Tung Realty; dan (c) separuh saham di dalam Khing Ming Realty Sdn Bhd dan Samudera Baru Darul Aman Sdn Bhd.

Diputuskan:

(1) Pemberian merujuk kepada tindakan memberi yang tidak disokong oleh ganjaran yang bernilai. Ini bukanlah keadaannya yang mana TAK walaupun di dalam keterangannya dan testimoni lisannya menyatakan bahawa pemberian adalah pertimbangan ke atas perkhidmatannya kepada Dennis dan syarikat keluarganya. Oleh yang demikian, TAK menjangkakan perkhidmatannya untuk mendapatkan balasan (lihat perenggan 23).

(2) Pemberian untuk perkhidmatan yang diberikan oleh TAK boleh dikenakan cukai. Keadaan di mana perkhidmatan yang dibayar untuk harta tanah aging (harta tanah Trans Street) tidak menyebabkan pemberian dikurangkan cukai. Keadaan di mana defendan pertama tidak mengisytiharkan pemberian sebagai pendapatan menyokong kenyataan plaintif bahawa harta tanah Trans Street dan saham Khing Tung Realty bukannya pemberian (lihat perenggan 26).

(3) Undang-undang adalah jelas berkenaan dengan kepentingan-kepentingan dan faedah-faedah pemegang-pemegang saham di dalam syarikat dan asset-aset di dalam syarikat tidak dimiliki oleh pemegang-pemegang saham, ianya dimiliki oleh syarikat. Apa yang TAK perlu lakukan adalah mendakwa Dennis untuk memungkiri janji dalam tidak membayar bahagiannya sebahagian dana yang diperlukan untuk menghidupkan empat harta tanah di dalam Khing Tung Realty Sdn Bhd. Dalam meminta mahkamah untuk membuat deklarasi, melanggar prinsip asas bahawa pemegang-pemegang saham tidak mempunyai kepentingan di dalam aset-aset syarikat. Nilai pemberian atas faedah yang diperolehi oleh TAK di dalam keseluruhan skim adalah begitu besar menjadikannya kebenaran (lihat perenggan 29, 31 & 40).

(4) Bagi harta tanah Tras Street, terdapatnya pinjaman daripada Dennis kepada TAK. Tiada pertikaian terhadap fakta bahawa sejumlah S$1,722,681.95 telah dibayar oleh Dennis melalui KKS Machinery Pte Ltd. Walaupun tidak terdapatnya perjanjian bertulis terhadap pinjaman tersebut, mengambil kira fakta perhubungan di antara Dennis dan TAK yang berkembang sepenuhnya dan terdapatnya kepercayaan di antara kedua mereka, ianya tidak jauh untuk sampai peringkat perhubungan mereka tersebut, Dennis akan meminjamkan sejumlah wang tersebut untuk membeli harta tanah Trans Street yang mana

selepas itu terdapatnya banyak projek berkenaan saluran paip yang mana Dennis boleh menggunakan yuran profesional TAK untuk ditolak dengan pinjaman. Apa yang TAK perolehi dari pinjaman ini adalah ianya adalah pinjaman tanpa faedah (lihat perenggan 42).

(5) Mahkamah memerintahkan seperti berikut: (a) penghakiman untuk plaintif terhadap defendan pertama untuk jumlah S$1,722,681.95; (b) tuntutan terhadap defendan kedua dibatalkan; (c) tuntutan balas defendan pertama terhadap plaintif kedua di dalam tindakan tuntutan balas dibatalkan (lihat perenggan 48).]

Notes

For cases on gift generally, see 6 *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2606–2620.

Cases referred to

Fawziah Holdings Sdn Bhd v Metramac Corporation Sdn Bhd (formerly known as Syarikat Teratai Kg Sdn Bhd) and another appeal [2006] 1 MLJ 505 (refd)

Lam Kam Loy & Anor v Boltex Sdn Bhd & Ors [2005] 3 CLJ 355; [2005] MLJU 225 (refd)

Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97 (refd)

Sabah Berjaya Sdn Bhd v Ketua Pengarah Jabatan Hasil Dalam Negeri [1999] 3 MLJ 145 (refd)

Tindok Besar Estate Sdn Bhd v Tinjar Company [1972] 2 MLJ 229 (refd)

Legislation referred to

Companies Act 1965 s 181
Evidence Act 1950 s 114(g)
Income Tax Act 1967 ss 3, 4

James Lo (George Lo & Partners) for the plaintiff.
Alvin Yong (Tan Yap & Tang) for the first defendant and second defendant.

David Wong JC:

INTRODUCTION

[1] When this suit was originally taken out by the plaintiff, it only concerned a property in Singapore, namely 49 Tras St, Singapore (Tras Street property) and the relief was for the repayment of S$1,722,681.95 from the first and/or second defendants, being money advanced by the plaintiff to the defendants for the purchase of the Tras Street property or alternatively for a declaration that the second defendant was holding half share in the Tras Street property on a resulting trust or on a constructive trust for the plaintiff. However when this suit was case managed, I was informed by counsels that there are several related cases between the same personalities in this case. Upon being informed I asked counsels whether or not the other cases will be affected by my ruling in this case and they both confirmed that it will as the facts in dispute were common among the cases. The dispute concerned whether or not certain properties registered in the name of Teo Ah Khing @ Teo Cho

Teck (first defendant in the original action) or his nominees were gifts from Yii Chee Ming (plaintiff in the original action) to Teo Ah Khing @ Teo ChoTeck.

[2] The related cases are *Teo Sing Teck v Yii Chee Ming & 4 Others* (26–03 of 2000–III(I) (oppression case), *Yii Chee Ming v Teo Ah Khing @ Teo Cho Teck & 2 others* (24–239 of 1999–II) (requisition of meeting case) and *Yu Chee Lieng & 2 others v Khing Tung Realty Sdn Bhd* (28–11 of 2001–III(I)) (s 218 case).

[3] In the oppression case, Teo Sing Teck took out an action under s 181 of the Companies Act 1965 (Act 125, Malaysia) against the Yii family on the grounds that the landed properties in Khing Tung Realty Sdn Bhd had been charged to a financial institution, and that additional directors had been appointed to the company without his consent as a director/shareholder. The allegations upon which Teo Sing Teck relied upon were that the one share given to him in Khing Tung Realty Sdn Bhd (Khing Tung Realty Share) was in fact a gift to him for consideration of all the works the first defendant did or will do for Yii Chee Ming and his group of companies, which allegations were the same for this case. This being the case, I requested counsels to consider whether the just mentioned cases can be dealt with in this case. After deliberations between the court and counsels, it was agreed that the issue of the ownership of the one share in Khing Tung Realty Sdn Bhd be dealt with in this case. Towards that end, counsels then made the relevant amendments to the pleadings of this case by including a counterclaim by Teo Ah Khing and Teo Sing Teck against Yii Chee Ming for a declaration that the one share held by Teo Sing Teck (which was transferred from Teo Ah Khing) was a gift from Yii Chee Ming. As a result of this arrangement, the 'requisition of meeting' case was withdrawn on 15 March 2006 with no order as to costs as it had become academic. The s 218 case was stayed pending the outcome of this case. As for the oppression case, counsels as directed by me had submitted on whether it ought to be struck out for duplicity and frivolous grounds with ruling reserved.

RESPECTIVE CLAIMS

[4] The plaintiff's claims as they appear in the statement of claim were for the following:

(1) a sum of S$1,722,681.95 and interest thereon from both the defendants jointly and severally or one or the other of them;

   (a) Alternatively, a declaration that the second defendant is holding half share in the property commonly known as 49 Tras St, Singapore 078988, on a resulting trust for the plaintiff;

   (b) Alternatively, a declaration that the second defendant is holding half share in the property commonly known as 49 Tras St, Singapore 078988, on a constructive trust for the plaintiff;

(2) interest at a rate to be determined by this honourable court; and

(3) costs.

[5] The defendants' counterclaims as they appear in their statement of claim were for the following:

(i) a declaration that the one share in Khing Tung Sdn Bhd and all the interest and benefits attached thereto was a gift to the first defendant who in turn gave it to the second plaintiff by counterclaim, Teo Sing Teck;

(ii) cost;

(iii) such other relief as this honourable court deems fit and just.

[6] Adjunct to the defendants' counterclaims, the plaintiff also counterclaimed as follows:

(a) an order that the second plaintiff by counterclaim do forthwith transfer the said one share in Khing Tung Realty Sdn Bhd to the defendant by counterclaim or his nominee;

(b) alternatively, a declaration that the second plaintiff by counterclaim holds the said one share in Khing Tung Realty Sdn Bhd on a resulting trust for the defendant by counterclaim;

(c) costs; and

(d) such further or other relief as this honourable court deems fit and just.

LEGAL BATTLES AND THE PERSONALITIES

[7] The two personalities in this case were Yii Chee Ming also known as Dennis (Dennis), the plaintiff in the original action and Teo Ah Khing @ Teo Cho Teck ('TAK') who was the first defendant in the original action.

[8] Dennis was a qualified accountant having obtained his degree in B Economics, majoring in accounting from Macquarie University, New South Wales, Australia. He returned from his tertiary education at the end of 1984 and since then worked in the family companies. At the material time he was a director of several companies, one of which was Hock Seng Lee Realty Sdn Bhd ('HSL Realty') and another Hock Seng Lee Bhd ('HSLB') which became listed in the Kuala Lumpur Stock Exchange in 1996.

[9] TAK was a professional architect and planner. He obtained a Bachelor in Architecture (Honours) from the University of New South Wales, Australia in 1987 and in 1989 he obtained Masters of Architecture in Urban Design from Harvard University, USA. He was also the Managing Director of Teo A Khing Design Consultants Sdn Bhd, TAK Design Consultants Sdn Bhd and TAK Management Consultants Sdn Bhd based in Kuala Lumpur, Kuching and Miri respectively and Teo A Khing Design Consultants Pte Ltd in Singapore.

[10] They first met on third May 1995 at a meeting at the office of the general manager of Land Custody and Development Authority ('LCDA') and from there their relationship blossomed and they literally became the best of friends. Both were

born in 1960, Dennis in October, TAK in August. Both were impressed with each other's Christian beliefs. In PW1–A at para 28 Dennis said:

> Another reason why I trusted the first defendant so much was spiritual, not commercial. I am a 'born again' Christian and the first defendant portrayed himself as a devout believer, and a Christian brother. He said he had done a lot of church work and I had no reason to doubt his sincerity then. At that time we were, I can definitely say, really close friends and confidants.

TAK in DW1–A at paras 13 and 14 said similar things:

> 13. The plaintiff further revealed that while studying in Australia, he was involved in the Overseas Christian Fellowship activities as well as church work in Kuching. He expressed a desire to become a positive corporate role model and loving brother to his other siblings and the entire management team.
>
> 14. I was impressed by the plaintiff's good work in church. My wife and I had been rather involved in church work in Australia and Singapore so I started to warm up to the plaintiff especially on the topic of Christian work in the corporate world.

[11] From that, this court can presume that this friendship was based on Christian values. As their friendship developed, their businesses continued to blossom. They did a lot of things together. They became so close that in TAK's words, he was credited with saving Dennis's life from a fall from the langsat tree where he was plucking some fruits for TAK.

[12] When the financial crisis hit the Asian region in 1997 this friendship was put to a test which is being played out in the courts when in 1999 numerous suits were filed by the two protagonists against each other in Kuching, Kuala Lumpur and Singapore. This suit is one of those suits.

[13] The plaintiff's case was based on the sole testimony of Dennis and likewise the first and second defendants' case was only based on TAK's testimony. In short this was a classic case of 'what I say is the truth, what he says is not the truth'. And this court is called upon to determine whose evidence was more credible.

THE DEFENDANTS' STORY

[14] The testimony of TAK was these. He was a very successful architect and planner and because of this credential Dennis pursued him to be involved in his vision to expand the family business. Prior to meeting with Dennis, TAK was involved in numerous projects in Malaysia and other countries with in his words 'the total cost exceeding RM50 billion'. The pursuit of TAK started on third 10 May 1995 at a meeting in Kuching at the office of LCDA's general manager initiated by Dennis. At that meeting Dennis informed him that his elder brothers were still operating his family's business in 'Chinaman style' and he wanted to transform the family company so that it could be listed in the KLSE. On the evening of the 12 May 1995, TAK had another meeting with Dennis who made the promise of 'greater heights' to him. By that TAK took Dennis to mean that he would be rewarded

handsomely by free shares in companies owning land and properties. In return TAK would have to give undivided attention to Dennis. Based on that understanding, TAK from the end of 1995 till April 1999 (when the first suit was filed by Dennis) spent a lot of time with Dennis to help him to make the 'paradigm shift' for the family company. And the subject matters of this suit are some of the gifts Dennis allegedly promised to spur TAK to work tirelessly for Dennis and his family companies. Those services which he did were listed in paras 67 to 163 of DW1–A. For the purpose of this judgment I will only refer to the notable services in the eyes of TAK which were:

Presentation to the Securities Commission

[15] In the words of TAK's statement, this was what happened:

> 105. The presentation to the Securities Commission was on 18 January 1996. On that day, I took a 5.40am flight from Kuala Lumpur and landed in Kuching at 7.20am HSLB's car was at the airport to fetch me. By 9am, we were set up in the HSLB conference and the presentation to the Securities Commission did not start until 1130am The Plaintiff specifically instructed his elder brothers not to speak but to 'sit up straight' and 'smile at all times to the officials'. The only persons that would be talking will be Ms Chieng, the Financial Controller of HSLB, Paul Yu, Simon Lau, and I was supposed to be the main speaker for the day. The plaintiff had passed a package to me and as I opened it, I found a stack of HSLB name cards with my name printed on it's as Corporate Planner/Advisor of HSLB. The plaintiff asked me to show the name card to the visitors from Kuala Lumpur, ie, Security Commission. A copy of the name card of Teo Ah Khing as Corporate Planner/Advisor of Hock Seng Lee Berhad is now shown to me and exhibited in p 1 of the of defendants' supplementary bundle of documents (part 1). At 11.30am sharp, two personnel from Security Commision, one Mahosani Hasnah and one Saifuddin Aby Bakar walked in with one D&C Goh Ching Yin and one Janette Ong.
>
> The Financial Controller of HSLB, Ms Chieng started the ball rolling by introducing the company. Then I was asked to make presentation of the various projects. For the next 45 minutes or so, I presented coloured slides, drawings and charts. I presented the topography of Sarawak and the vast terrain of low-lying land in the coastal area of Sarawak that needs the expertise of HSLB to reclaim and made the land suitable for development. As an urban planner, I then went on to describe the areas of turnkey works that HSLB are best in. I also presented in detail the Demak Laut Phases 1 & 2.
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> 106. I thought the presentation went well. The officials did not make much comment. We adjourned to Japanese Restaurant for lunch together.
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> 107. On 20 January 1996, the plaintiff called me and informed me that the presentation to the Security Commission was successful and congratulated me of the fine work. According to the plaintiff, it was a very significant event and after that presentation, I was not aware there were any more presentations required to the Security Commission except for the roadshows in later 1996 and 1997.
>
> 108. I was never paid for these services and for the presentation.
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> 109. I did not invoice the plaintiff when the presentation was done because as I said, at the material time, the plaintiff had repeatedly assured me that he would reward me with

properties, cars and money for my services. In particular, the plaintiff was extremely happy with my services as HSLB was successfully listed.

110. Following the listing of HSLB, the company became a success story with its profits rising and the value of its shares increasing rapidly. The plaintiff benefited largely from the listing of the company. A copy of the various documents showing the financial gains of HSLB are now shown to me and exhibited hereto marked as 'T5' (pp 1 & 2, 40 to 70 and pp 72 to 225 of defendant's supplementary Bundle of document (No 2))

Arranging for the Prime Minister to visit HSLB in Kuching on August 1997

131. I first mooted the idea of having the Prime Minister to pay a visit to HSLB during the latter's state visit in August since HSLB was the sole turnkey contractor appointed by Samudera Baru. Subsequently, the bumiputra shareholders then went ahead to finalise the itinerary of the visit with the Prime Minister's Department. The plaintiff requested me to accompany him, the Prime Minister and the Chief Minister of Sarawak in a four wheel drive. During this visit, the Prime Minister and the Chief Minister viewed the Demak Laut masterplan and the site. Again, I highlighted several aspects of HSLB's business operations to the Prime Minister and the Chief Minister as requested by the plaintiff. I also explained about Hock Seng Lee Machinery's intention to apply for privatization exercise to recondition all heavy equipment nations wide. Such exercise could cut down the reliance on the import of new heavy machinery and reduce the country's deficit in import. I was asked by the Plaintiff to highlight the above to the Prime Minister. The Prime Minister was agreeable with the concept. A copy of the newspaper article in respect of the PM's visit is now shown to me and exhibited hereto and marked as 'T7'. (p 11 of defendant's supplementary bundle of document (Part 1)).

132. The plaintiff has not paid me a sum of RM150,000 which I only invoiced the plaintiff on 10 July 1999 after he filed the multiple legal suits against me for recovery of the various gifts he had given me.

133. I did not invoice the plaintiff at the material time, the plaintiff had reassured me that he reward me with gifts for my service and bring me to 'greater heights'.

Demak Laut Land Swap Scheme

105. On or about 6 September 1995, the plaintiff and Paul Yu told me that they were interested to obtain some government land and requested me to help them to identify and acquire by formal submission for industrial land in Kuching.

106. The Demak Laut land swap scheme was the biggest and the first real estate undertaking by HSLB as a direct turnkey contractor with the Sarawak Government for 1,385 acres of land. Total development value for the project was estimated at RM4 billion and the reclamation contract for HSLB alone would be around RM400m for the 1,385 acres of land. At that time, HSLB was proposing to reclaim for the Ministry of Industrial Development an area for industrial use in the Sama Jaya area and also as represented in the Demak Laut plan. As a consideration for HSLB, several parcels of industrial land in Kuching and Miri (Kuala Baram Industrial Estate) held by the Ministry of Industrial Development were also being reviewed by me. Copy of the press release is now shown to me and exhibited in pp 73 to 74 of the defendants' supplementary bundle of documents (No 2).

107. I acted on my personal capacity as requested by Paul Yu and the plaintiff to advise on the property development potential and to formulate strategies for the land to be exchanged.

I spent many hours deliberating with the plaintiff and Paul Yu on the land swap concept. I was to present the concept to the state government.

108. The plaintiff requested me to ascertain that the planning and amendment plan will be received favourably by the planning authority before HSLB's submission to the Ministry of Industrial Development. I was asked to draft several official replies to the Government Authorities and to review correspondences between HSLB and the Ministry of Industrial Development and I was also asked to draft a letter to the CM on their behalf.

109. I formulated strategies to convince the relevant authorities and to obtain their approval in respect of the Demak Laut II project as requested by the plaintiff. I also made a presentation of the said project for the approval of the Land Committee of Sarawak. A copy of the letter from Kementerian Pembangunan Perindustrian to the plaintiff pertaining to the project is now shown to me and exhibited hereto and marked as 'T3' (p 10 of defendant's supplementary bundle of document (No 2))

110. On 25 June 1996, the plaintiff informed me that my presentation was well received and approved by the Land Committee of Sarawak.

111. I requested the plaintiff to pay for my professional fees to which the plaintiff agreed. The plaintiff further told me to source for a new office in Kuala Lumpur and added that the said office will be a 'bonus' to me.

112. At the material time, I understood that the word 'bonus' referred to a gift from the plaintiff, in addition to fees paid to my companies for professional master planning and architectural work done.

113. At that material time, we were really close friends and confidants therefore I believed he will keep his promise even though without any written agreement.

114. As I said, at the material time, the plaintiff had reassured me that he would reward me with gifts for my services.

Emergency Evacuation for the Plaintiff and Service at the Singapore General Hospital

151. This is the event which I have been credited by the plaintiff and his family for saving the plaintiff's life. I received a phone call on Sunday evening, ie 19 January 1997 (while having dinner with some friends) from Paul Yu. The plaintiff's brother informing that the plaintiff had met with a near fatal accident that afternoon and was admitted to Normah Specialist Hospital in Kuching. According to Paul Yu, the plaintiff was in grave pain and requested my help. Immediately, I contacted a doctor friend, one BG Dr Lim Meng Kin to get help to transport the plaintiff to Singapore. That night itself, I chartered a flight to fly into Kuching and flew the plaintiff and Paul Yu out to Singapore.

152. With prior arrangements and helps from my friends in Singapore, I managed to admit the plaintiff (a Malaysian) into Singapore General Hospital which is acclaimed to have the best neurosurgeon and orthopaedic surgeon (Mr Tan Ser Kiat) to treat plaintiff who had crushed his Lumbar L3, L4 and L5 and crushed his ankle. The doctor in Singapore General Hospital performed successful emergency operation to relief his agony. During the plaintiff stay in the hospital, my wife and I took care of all the plaintiff's needs and prepared food for him daily.

153. During the Chinese New Year of 1997, my wife and I would even purchase clothing, arrange for hair cut, masseurs for the plaintiff while he was recuperating in the hospital. After he was discharged from the hospital, my wife and I arranged for the plaintiff's medical check-ups and transportation in Singapore.

154. As non-family members, I agreed with the plaintiff's family members not to reveal the circumstances of the plaintiff to any outsiders. The plaintiff was then the chairman of HSLB.

155. The plaintiff did not reimburse me as I did not bill him initially for most of his expenses.

156. According to the plaintiff, he fell from a langsat tree when trying to pluck langsat for me. I was deeply touched by him then.

157. The plaintiff and his family members were really grateful for what I had done for him. We were like brothers and trusted each other without reservation after that. It was because both of us really trusted each other that he mooted the idea of having my wife to stand as his nominee and guarantor for him. I had no hesitation to let my wife and her brother in law hold shares that were worth millions under the margin accounts. However, he had exploited and abused our trust on him and caused my wife and her brother-in-law to be sued by the bank.

In concluding his statement TAK said:

160. I did not claim against the plaintiff for the outstanding invoices because as far as I am concerned, whatever the plaintiff had given me so far were genuine gifts to me for my services and close friendship. I would add that even though I had issued two invoices to him in 1999, the two invoices did not reflect all my services whether personally or through TAK campanies, to him, his family and his companies.

161. For all the things which I had done for the plaintiff, his family and HSLB, in particular the listing of HSLB on the KLSE, the emergency air lift of plaintiff to Singapore to 'save his life', the plaintiff said that he was 'eternally' grateful.

162. I believe the plaintiff is still grateful to me for saving his life. The various suits commenced by the plaintiff and his companies against me, my companies, my wife, and my wife's brother-in-law were in response to my wife's defence in one Singapore suit, Suit No 344 of 1999 *BNP v Ng Kit Har* for a sum of USD4,778,070.34 for loans. The bank suits were commenced by BNP due to the plaintiff's decision not to continue paying the monthly interest for demands from the bank.

163. My wife's defence in the BNP suit is that she was nominee director and nominee guarantor for all monies and shares forwarded by the plaintiff and his companies to accounts started in the banks.

THE PLAINTIFF'S CASE

[16] The gist of the plaintiff's case was summed up in para 22 of PW1–A which states:

The first defendant was a professional engaged by various companies within the HSL Group. He performed services for us. He issued invoices. We paid him. No businessman in his right mind would give such a humongous gift to the architect who was doing work for his companies.

[17] The humongous gift amounted to some RM8m which was made up as follows:

(1) Tras Street property (S$1,722,681.95 which was equivalent to RM3,962,168.48 at the date of the writ);

(2) Khing Tung Realty Share (RM2.3m using the worth of the land properties as a yardstick for the valuation);

(3) Half shares in Khing Ming Realty Sdn Bhd and Samudera Baru Darul Aman Sdn Bhd, the subject matters of two suits in Kuala Lumpur and Shah Alam (RM1.7m).

[18] In respect of the half share in Tras Street property in Singapore, this was what he said at pp 3–7 in PW1–A:

Singapore Property

Gift or Loan?

18. I paid the purchase price for the property. Even though the second defendant is registered as half-share owner of 49 Tras St, neither the first nor the second defendants came up with half-share of the purchase price in the sum of S$1,722,681.95 (equivalent to RM3,962,168.48 at the time the present writ was filed).

19. This is because the first defendant said he did not have sufficient funds to pay me yet, but he promised to pay me once the profits started coming in from those projects on which he was our architect and master-planner and from other projects which we were planning to undertake in joint venture.

20. It is absolutely not true what the first defendant says, that the payment for his half-share of the property was a gift from me.

21. The issue of the payment being a gift is a complete afterthought. It had never been mentioned by the first defendant before our disputes began in 1999. It is a complete deviation from the actual situation, which is that I paid on behalf of the first defendant first, because he did not have enough cash, and it was absolutely clear that he would repay me later.

22. The first defendant was a professional engaged by various companies within the HSL Group. He performed services for us. He issued invoices. We paid him. No businessman in his right mind would give such a humongous gift to the architect who was doing work for his companies.

23. I was confident the first defendant would be able to repay me such a big advance because I trusted him, in view of the projects on which the first defendant and my companies were working so closely.

24. I did not ask the first defendant to sign a loan agreement or any form of written document because I thought I had some measure of control over the profits which the first defendant was expecting to make.

(a) At that time, our intended project for a large mixed use development in Jalan Ban Hock (for which we had appointed him architect and master-planner) was valued at around RM600-800m. Another project called 'Demak Laut' was around RM3 billion. The first defendant's fees would have been around 4% of the development cost, ie, around RM24m for Ban Hock and more than RM100m for Demak Laut.

(b) These big fees which the first defendant hoped to earn were through the HSL Group. As the paymaster, I was not too worried that the first defendant would break his promise, since I figured I could contra the amount of my loan to him eventually from the profits and/or fees due to him.

25. At that time, I was not concerned that the first defendant might say he had paid the vendor for his own half-share of 49 Tras St because all the money paid by me went through the Singapore lawyer who handled the sale & purchase agreement. There is a black and white record with the Singapore lawyer that the money came through my nominee company, KKS.

26. I had said earlier that the first defendant was also hoping to make substantial profits from projects which we were doing in joint venture. For Demak Laut, to take an example, the first defendant had 20% equity of our joint venture company. He was also our appointed architect and master-planner. If the project had taken off, the first defendant would have a stake in 20% of the substantial profits, on top of his professional fees as an architect and master-planner.

27. Compared to the value of these projects, the half-share of the purchase price of 49 Tras St was an advance that the first defendant could easily repay. Also, considering our mutual interests, I did not want to offend him by asking him to sign a loan agreement, as that might show I did not trust him. At that time, I trusted him without reservation.

28. Another reason why I trusted the first defendant so much was spiritual, not commercial. I am a 'born again' Christian and the first defendant portrayed himself as a devout believer, and a Christian brother. He said he had done a lot of church work and I had no reason to doubt his sincerity then. At that time we were, I can definitely say, really close friends and confidants.

For the Khing Tung Realty Share, Dennis at paras 66–70 said:

November 1995: Uplands Properties

66. I refer to the 1999 invoice, item E, for RM42,000 at PBD 285. The first defendant did give us some advice about properties in the Uplands area in Kuching. He said he had been appointed by LCDA as the master-planner for a mixed use development in this area and that once the development was underway, adjoining pieces of private land would sky-rocket in value. The first defendant thought that property speculators could make at least a three-fold gain. We did purchase four properties in the area, namely Lots 153, 395, 819 and 1203, all of Block 10, Kuching Central Land District ('the Lands'), as advised by the first defendant.

67. A company by the name of Khing Tung Realty Sdn Bhd ('Khing Tung') was put as the registered proprietor of these lands. The shareholders of Khing Tung are Teo Sing Teck

(the first defendant's brother, with 50%) and I (also with 50%). The first defendant wanted to put his share in his brother's name because he said that, as the master-planner for LCDA, he did not want any conflict of interest to be exposed.

68. The Lands cost RM4.6m altogether. My brothers (Yu Chee Hoe, Yii Chee Hau and Yu Chee Lieng) and I paid the full purchase price. Khing Tung has never paid my brothers or I for the value of the Lands. The first defendant has also said that the half-share of the Lands worth RM2.3m was a gift from me to him – this is totally untrue.

APPROACH OF THE COURT

[19] What I have before me was two conflicting sets of oral evidences. In dealing with such a situation, I ask myself the question 'which version of the events is more reasonable in the circumstances of the case' and in coming to my conclusion, I was guided by what was said in *Tindok Besar Estate Sdn Bhd v Tinjar Company* [1972] 2 MLJ 229 by Chang Min Tat J at p 230:

> For myself, I would with respect feel somewhat safer to refer to and rely on the acts and deeds of a witness which are contemporaneous with the event and to draw the reasonable inferences from them than to believe his subsequent recollection or version of it, particularly if he is a witness with a purpose of his own to serve and if it did not account for the statements in his documents and writings. Judicial reception of evidence requires that the oral evidence be critically tested against the whole of the other evidence and the circumstances of the case. Plausibility should never be mistaken for veracity.

[20] And also what is stated in the case of *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor* [2003] 2 MLJ 97 at p116 where the Court of Appeal held as follows:

> A judge who is required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. He must, when deciding whether to accept or to reject the evidence of a witness, test it against relevant criteria. Thus, he must take into account the presence or absence of any motive that a witness may have in giving his evidence. If there are contemporary documents, then he must test the oral evidence of a witness against these. He must also test the evidence of a particular witness against the probabilities of the case. A trier of fact who makes findings based purely upon the demeanour of a witness without undertaking a critical analysis of that witness' evidence runs the risk of having his findings corrected on appeal. It does not matter whether the issue for decision is one that arises in a civil or criminal case: the approach to judicial appreciation of evidence is the same. There are a number of important and leading cases in which the point has been considered.

COUNSELS' CONTENTIONS

[21] As this case is purely a case of finding of facts without any reference to any issues of law, it would be an exercise in verbosity if I were to set out their read of the events. However that is not to say that their submissions were of no use to the court.

On the contrary this court is grateful to both counsels for their usual clarity in putting forth their clients' case.

FINDINGS OF THE COURT

[22] Having considered and scrutinized the evidences adduced and the submissions advanced by the respective counsels, I am inclined to agree with the position taken by the plaintiff and I do so for the following reasons:

First

[23] I wish to comment on the use of the word 'gifts' by TAK. Gifts in my mind refer to an act of giving unsupported by valuable consideration. (See *Sabah Berjaya Sdn Bhd v Ketua Pengarah Jabatan Hasil Dalam Negeri* [1999] 3 MLJ 145). One cannot say that this was the case here as TAK all through in his statement (DW1–A) and oral testimonies stated that the gifts were in consideration of his services to Dennis and his family companies. In para 28 he said:

> I begin to realise that rather than paying TAK and me outright cash/fees, the plaintiff is using the 'kinds' to convince his siblings that there were no 'big' fees involved for engaging my company and my personal services. I was to work hard for my 'kinds' ie shares in companies and buildings etc. TAK Company and I did provide both professional and personal services to the plaintiff and his companies including Hock Seng Lee Realty Bhd. *I have never received any cash for my personal services to the plaintiff and his companies.*

Also all through paras 67 to 147 he used the phrase of:

> *I did not invoice the Plaintiff because as I said, at the material time, the Plaintiff had reassured me that he would reward me with gifts for my services.*

So in short TAK expected his services to be compensated.

[24] TAK strenuously tried to differentiate his personal services and that of his company. With respect, there was no difference for the simple reason that the services he or his company provided to the plaintiff related to his professional works and with the aim of enhancing the worth of Dennis and his family companies, which brings me to my next ground.

Second

[25] Though it is not the duty of this court to determine whether or not the Tras Street property and Khing Tung Realty Share were taxable under the Malaysian Income Tax Act but the answer to that question provides a relevant consideration to the issue at hand. Sections 3 and 4 of Malaysian Income Tax Act 1967 provide as follows:

> 3. Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of assessment upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia.

A 4. Subject to this Act, the income upon which tax is chargeable under this Act is income in respect of —

(a) gains or profits from a business, for whatever period of time carried on;

(b) gains or profits from an employment;

(c) dividends, interest or discounts;

B

(d) rents, royalties or premiums;

(e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;

(f) gains or profits not falling under any of the foregoing paragraphs.

C

[26] Even with a cursory look at s 4(a) and (b), one would conclude the gifts for service rendered by TAK would be taxable. The fact that the services were paid for with a foreign property ('Tras Street property') does not make the gift less taxable. That being the case, I concur with the submission of the plaintiff's counsel, Mr James Lo that the fact the first defendant did not declare the gifts as income corroborated the plaintiff's assertion that Tras Street property and the Khing Tung Realty Share were not gifts.

D

[27] Furthermore, it does not make business sense for Dennis to personally give Tras Street property and Khing Tung Realty Share to TAK as gifts. Any accountant worth his salt would ensure that whatever gifts given to TAK would be tax deductible and this could be done by channeling the gifts through Dennis's family companies as legitimate expenses. Any claim for tax deductibility by Dennis's family companies would not be a problem as those alleged gifts were for professional services rendered or to be rendered by him. Why would Dennis who in TAK's view was ' a very careful businessman and shrewd accountant' want to give RM6m worth of gift which in effect costs him more than RM6m for the obvious reason that it would not be a tax deductible item to his personal income. This factor shows that there was never an intention to make gifts to TAK. One must bear in mind that during the period from 1995–1999, TAK had received RM1m in professional fees for his works from Dennis and his family companies. This was not an amount to be sneezed at bearing in mind that TAK companies' annual income did not run into millions of ringgit.

E

F

G

Thrid

H **[28]** For the Khing Tung Realty Share, the claim by TAK was framed in the following manner:

> a declaration that the one share in Khing Tung Realty Sdn. Bhd and all the interest and benefits attached thereto is a gift to the first Defendant who in turn gave it to the second plaintiff by counterclaim, Teo Sing Teck …

I

[29] From the pleadings and the evidences given in court, TAK's claim in substance was a breach of promise on the part of Dennis to pay on his behalf half of the funds required to inject the four properties in Khing Tung Realty Sdn Bhd. The way the claim was framed does not reflect that. What the plaintiff was asking the court to do

was to declare that the second plaintiff in the counterclaim had half interests in the aforesaid four properties free from encumbrances by virtue of Dennis's promise. The law is clear about the interests and benefits of shareholders in a company and that is assets in the company do not belong to the shareholders, they belong to the company. In *Lam Kam Loy & Anor v Boltex Sdn Bhd & Ors* [2005] 3 CLJ 355; [2005] MLJU 225, Gopal Sri Ram JCA at p 359 said this:

> The source of the confusion in the minds of the plaintiffs when pursuing their claim against the second to the sixth defendants is their oversight of the fundamental principle that a company is a separate entity distinct from its shareholders. The property owned by a company belongs to it and not to its shareholders. That proposition was established by the leading case of *Macaura v Northern 10 Assurance Co Ltd & Ors* [1925] AC 619 where Lord Buckmaster said:
>
> > Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the Company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.

[30] This dicta was alluded to and applied in the recent case of *Fawziah Holdings Sdn Bhd v Metramac Corporation Sdn Bhd (formerly known ss Syarikat Teratai Kg Sdn Bhd) & Another Appeal* [2006] 1 MLJ 505. The rights of the second plaintiff in the counterclaim as a shareholder were not in dispute as far as I am concerned, which rights if I may repeat were not rights to the interests in the four properties of Khing Tung Realty Sdn Bhd.

[31] With respect, what TAK should have done was to sue Dennis for breach of promise in not paying on his behalf half the funds required to inject the four properties in Khing Tung Realty Sdn Bhd. In asking the court to make a declaration as framed and as pointed earlier, infringes the basic principle that shareholders have no interests in the assets of a company. Hence, on this ground alone this claim can and is hereby struck out.

[32] Even if I were to allow the first defendant to pursue his claim in the present form, he would also fail and the reasons are these. Firstly, it is inconceivable that a person after knowing another person for barely six months would make a gift worth RM2.3m. This is just not consistent with human behavior no matter how generous that person might be. Secondly, I rely on what was stated by TAK's brother, Teo Sing Teck in para 8 of originating petition No 26–03 of 2000–III/I which reads as follows:

> the company has been incorporated with the intention and agreement that the interest and benefit of [the plaintiff] and [Teo Sing Teck] in the said lands and/or any benefits from the development thereof in the joint venture if it eventuated shall be equal and the share proportion of [the plaintiff] and [Teo Sing Teck] in the Company shall be equal. It has also been the agreement between [the plaintiff], Teo Ah Khing and [Teo Sing Teck] that [the plaintiff] shall provide the necessary fund for the *development* of the said lands if at all in the joint venture and that Teo Ah Khing *and the TAK group of companies shall provide their professional skill.*

[33] And the way TAK reacted when cross examined on para 8 of the originating petition fortifies my conclusion. This was what transpired.

Q: On NOP/163, line 5 and NOP/164, line 6, you said that you were never involved in Khing Tung and your companies were not involved in the development of the site. The company, Khing Tung, was the joint venture by which you and your group of companies would provide your professional skills for the development of the lands purchased by Khing Tung, isn't that so?

A: It is not true. My groups of companies have never been approached by Khing Tung to provide any services.

Q: Do you agree that Khing Tung was a joint venture between the plaintiff and you on the agreement that you and your companies would provide your professional skills for the development of the lands?

A: Let me answer the first part. One share in Khing Tung was a gift by Dennis to me. And I gave this one share to my brother, Teo Sing Teck. My brother and Dennis became equal shareholders of this company. There is no agreement for me and my companies to provide professional skills for the development of the lands.

Q: The petition filed in originating petition no 26-03 of 2000-III/I by Teo Sing Teck against the plaintiff and four others states the petitioner's case as being, 'the company has been incorporated with the intention and agreement that the interest and benefit of [the plaintiff] and [Teo Sing Teck] in the said lands and/or any benefits from the development thereof in the joint venture if it eventuated shall be equal and the share proportion of [the plaintiff] and [Teo Sing Teck] in the company shall be equal. It has also been the agreement between [the plaintiff], Teo Ah Khing and [Teo Sing Teck] that [the plaintiff] shall provide the necessary fund for the development of the said lands if at all in the joint venture and that Teo Ah Khing and the TAK group of companies shall provide their professional skill. Do you remember this is what para 8 of the petition says?

A: I can't recall. This is the first time I have seen it.

Q: The petition was fixed for trial earlier this year and you had come with a witness statement which is almost identical to DW1-A and you say this is the first time you have read para 8 of the petition. Do you confirm this?

A: Some parts is familiar, some parts is not. I am not involved in Khing Tung.

Q: If you were not involved in Khing Tung, why did you file a 38 page long witness statement with 172 paragraphs in that case, as compared to the petitioner's 4 page long witness statement with 7 paragraphs?

A: I am not involved in Khing Tung and I was informed by my brother that Dennis and his brother at that time had charged the land to the bank without his consent, I then asked my brother to consult a lawyer regarding his position. I was then advised by my brother that he need to file a petition. What he did was, he used my previous witness statement where the allegation of the gift comes from and added on some parts to include as a witness statement from me. I now recall that I did read this one but the para 8 was of no significant to me.

Q: Now that you recall para 8 of the petition, can you explain to the court why you said there was no agreement for you and your companies to provide professional skills when the petition states otherwise?

A: After reading para 8, it says TAK shall provide their professional skills. But as I said earlier, there was no official agreement signed between parties.

Q: You are saying there was an unwritten agreement to that effect? A

A: Yes.

[34] For TAK to say that this was the first time he had seen para 8 speaks volume on his credibility or rather the lack of it as a witness of truth. He had filed 38 pages of affidavit in support of the oppression case and there can be no doubt to this court that TAK was the main and only protagonist for all suits filed between the parties. Paragraph 8 actually debunks TAK's claims because if one accepts the truth of it, it says that Dennis was required to fund the development of the four properties which was different to providing the funds for the purchase of the four properties. B C

[35] Further in his reply to Dennis's counterclaim to the counterclaim, TAK at para 5 stated that the Khing Tung share was to spur him on to work closely with Dennis. Compared this to his affidavit dated 15 September 1999 (encl 208 p 25) in which he stated at para 38 that 'In light of the various things I have done for the plaintiff, his family and HSLB, in particular HSLB's listing on the KLSE and as a result of his promises to take care of me, the plaintiff made the following gifts to me'. In para 39, he listed the share in Khing Tung Realty as one of those gifts. D

[36] There is a difference between gifts for services rendered and gifts to spur TAK to work harder. One can say that TAK was actually blowing hot and cold and when a litigant does that, it only means he was not sure of his case. In my view he was trapped by what he had stated in the just mentioned affidavit because as rightly pointed out by Mr James Lo, in November 1995 he had hardly provided any services to Dennis and his family companies and to wriggle out of that trap he had to change his stand. E F

Fourth

[37] Further on the credibility of TAK, I cannot but help to be unimpressed by the way he brushed aside the non payment of the service tax by him. This was what transpired: G

Q: Bringing you back to the second invoice, exh A, p 74, service tax of RM6,000 was billed and collected. It is not true when you said that service tax was not payable because, as shown on this invoice, service tax was billed. Do you agree?

A: I disagree. The RM6,000 could have been refunded to Dennis because it was not required to be paid. The amount was small compared to the work and favour done for Dennis. It was not an issue for Dennis and meant to be contra later in other bill. H

Q: It is not true that this was 'not an issue for Dennis' because the plaintiff never knew that you did not pay service tax of RM6,000. Do you agree?

A: I disagree.

Q: Are you saying that the plaintiff knew that you did not pay the RM6,000 tax? I

A: The plaintiff might not know then, but the fact is that the personal invoice of this amount had been issued to him, and as an accountant he could have queried me regarding this service tax.

Q (Court): Did you speak to your accountant about the exemption of paying service tax of RM6,000 in 1995 and 1996 when this was issued?

A: No.

Q (Court): Did you at anytime prior to this law suit inform the plaintiff about this exemption of RM6,000?

A: No.

[38] The attitude of TAK shows that he had not been candid to Dennis nor was he too worried about his duty as a taxpayer to pay the service tax to the government.

Fifth

[39] If TAK's testimony is to be believed, his fees and benefits would be as follows:

(a) RM1m paid by HSL group of companies;

(b) RM6m which comprise of the Tras Street property, Singapore and Khing Tung Realty Share;

(c) Shares in Khing Ming Realty Sdn Bhd and Samudera Baru Darul Aman Sdn Bhd, were worth about RM300,000 and RM1.4m respectively;

(d) Architectural and planning fees in Demak Laut Project and Kedah coastal project. For the Demak Laut project if it materialized TAK's fees by his admission would be between RM30m to RM40m. (see notes of proceedings — p 235 line 5–10);

(e) His direct and indirect equity in Khing Tung Realty Sdn Bhd, Khing Hau Realty Sdn Bhd, Khing Ming Realty Sdn Bhd, Samudera Darul Aman Bhd, Keris Universal Sdn Bhd and Yakin Imbuh Sdn Bhd.

[40] The value of gifts or benefits to be gained by TAK in the whole scheme of things was just too huge to be true.

Sixth

[41] It was also TAK's contention that Dennis knew his credentials and as such sought him out so to speak to be his adviser. With respect, TAK's credentials in my view had been exaggerated. He said in DW1-A that prior to meeting Dennis he was involved in projects worth RM50 billion which in anyone's mind is a super mega figure. One percent (as opposed to the usual 4% rate of fees charged by architects) of RM50 billion would amount to RM50m. This just does not stack up to the financial accounts of the second defendant which had accumulated losses and TAK's

four companies (three in Malaysia and one in Singapore) which had a group net profit of only RM800,000, out of which RM300,000 came from HSL group of companies. What happened to the fees from RM50 billion projects? Did they stop after TAK met Dennis? Even so, why did TAK not produce his past financial accounts reflecting his professional fees from the RM50 billion projects?

Seventh

[42] For the Tras Street property, it was my finding that there was a loan from Dennis to TAK. There was no dispute to the fact that the sum of S$1,722,681.95 was paid by Dennis through KKS Machinery Pte Ltd. Mr Alvin Yong, counsel for the defendants, however placed much emphasis on the fact that there was no written agreement for the loan and hence the loan was void for uncertainty. In dealing with this issue I take into account the fact the relationship between Dennis and TAK in July 1996 had fully blossomed so to speak and there was much trust between the two of them. It was not far fetched in my view that at that stage of their relationship Dennis would lend this sum of money to purchase the Tras Street property as by then there were a lot of projects in the pipeline where Dennis could use TAK's professional fees to set off against the loan. TAK's gain from this loan was that it was an interest free loan.

Eighth

[43] TAK also made a big fuss in his testimony about being appointed as Corporate Planner/Adviser to HSLB at the presentation to the members of the Security Commission. Having watched TAK perform in court I have no doubt that Dennis wanted him to do the presentation when he volunteered. When giving testimony in court, he came across to me as a very intelligent person, who had an excellent command and knowledge of the English language, spoke well in public, could instinctively and masterly arrange his thoughts in any situation and always dressed immaculately. An example of this can be seen in this exchange during cross examination at p 191 NOP:

Q: Put that, the intention was that you would both operate from that office and that is why the property is registered half in the name of your company and half in the name of the plaintiff's company. Do you agree?

A: There are twoparts in this question. First part is we agreed to keep the ground floor of the property for future sales centre for Kedah Land Reclamation project. As for the second part, I disagree because it was a last minute change by Dennis in front of the lawyer.

[44] TAK here was able to instinctively dissect the question and answered it in two parts which confirms my impression of TAK. But to say his presentation played a part in HSLB's listing is far fetched. Anyone with any knowledge of the listing exercise of a company on the KLSE would know that the bottom line of the company is of paramount importance and to package the whole exercise would be left in the hands of reputable firms of public accountants and merchant bankers. In this case, the public accountants and the merchant bankers were KPMG and Sakura Merchant

Bankers who were paid RM100,000 and RM200,000 for their services respectively. Though these consultants were handsomely paid, they also cannot be held responsible for the listing. The main factor in my view was the financial standing of HSLB because without it, any application for listing would not even get off first base. Dennis had testified the listing exercise had begun well before he met TAK which had not been contradicted by TAK.

Ninth

[45] TAK also contended that because of his contributions to Dennis and the family companies, HSLB's share price rose to around RM53. He attributed this to his introduction of the Demak Laut project to HSLB. In my mind there was no doubt that the announcement of the Demak Laut project caused the share price to rise. But can this be fully attributed to TAK? In 1997, if anyone had lived through that period, one would know that any unfounded rumors would cause stock prices to rise. It was what the layman called 'crazy market', where prices on the stock exchange will double, triple, and quadruple within a matter of hours without any due consideration of the fundamentals of the company is financial standing. The contributing factor to the price rise was the market sentiments and not TAK. In any event the price of RM53 came back to a realistic price of RM7 after the crash in 1997.

Tenth

[46] I was also baffled by TAK's failure to call witnesses from Singapore. He had stated that his wife, the lawyer, Pastor Aow Kwong Bu, the previous tenant and one Khoo Ah Hock knew the Tras Street property was a gift. It may well be these people were not subject to the jurisdiction of this court but surely his wife and the Pastor could come voluntarily to testify. No explanation was given why they were not called. However I will not apply s 114(g) of the Evidence Act 1950 as requested by Mr James Lo. As for the failure to call Teo Sing Teck (the second plaintiff in the counterclaim) to testify in respect of the Khing Tung Realty share, it was also baffling, to say the least. This gentleman was in court throughout the trial. I have no doubt that the share was put in Teo Sing Teck's name by TAK either for fear of conflict of interests or as a gift to him. But whatever the reasons, he was privy to the transaction and should have been called to testify as to the circumstances how the share came to be registered in his name. This failure to call him of course reinforces my view that TAK was the man behind the legal battles which does not bode well for him when he testified he did not know much about para 8 of the petition in the oppression case.

Eleventh

[47] There was no doubt in my mind that TAK had brought some change and dare I say some excitement to the life of Dennis and his brothers. It is not every day, at least for the ordinary people, that one could charter a special jet to go to Rotterdam from London. TAK during his testimony had tendered many photos taken of him and Dennis in the company of many VVIPs. No doubt TAK had improved the networking of HSLB group of companies but the reality of course was that it was just not reasonable from a business point of view that such huge gifts be given to someone

who was known to Dennis for only three years. Furthermore none of the mega projects materialized. In fact TAK had been taken care of quite well in that during the relationship he and his company had earned professional fees of RM1m from Dennis's family company, had been invited to take up equity in companies which were supposed to perform the works for the mega projects and on top of all these, his company had been engaged to do the architectural and planning works. TAK in any one's language had been well looked after by Dennis.

[48] For reasons stated above, in respect of the original action I made the following orders:

(1) judgment for the plaintiff against the first defendant in the sum of S$1,722,681.95;

(2) statutory Interest at the rate of 8% per annum from the date of this order until the full and final payment of the sum of S$1,722,681.95;

(3) costs to be taxed unless agreed was awarded to the plaintiff against the first defendant in respect of the judgment sum of S$1,722,681.95; and

(4) the claim against the second defendant was struck out with costs to be taxed unless agreed to the second defendant.

For the counterclaim action I made the following orders:

(1) the first defendant's (the first plaintiff in the counterclaim) claims in the counterclaim was struck out with costs to be taxed unless agreed to the plaintiff; and

(2) the plaintiff's counterclaim against the second plaintiff in the counterclaim action was also struck out with costs to be taxed unless agreed to the second plaintiff in the counterclaim.

Order accordingly.

Reported by Peter Ling